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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

Jim Roe,

Plaintiff,

vs.

Mountain View Police Department,
 Officer Patrick Ward, Officer Britton Moore,
 Officer Marco Garcia, City of Mountain View,
 and Does 1-10,
 Defendants.

AMENDED COMPLAINT

Case No. CV-17-3249 (BLF)

JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiff brings suit against three Mountain View, California, police officers, the Mountain View, California, Police Department, and the City of Mountain View, California, under 42 U.S.C. section 1983. He further asserts related state law causes of action. On June 7, 2015, a Sunday night, two Mountain View police officers maliciously arrested Plaintiff in his home for alleged misdemeanor conduct occurring over two weeks earlier. This arrest was made without benefit of probable cause or an arrest warrant, absent any exigent circumstance, and in violation of California Penal Code section 836 as well as the Federal and California Constitutions. The police arrested Plaintiff in his home with reckless disregard for the emotional well-being of Plaintiff's autistic son, who was in the home, pounding on the walls and screaming in response to the commotion, while his mother wept. In the wake of the unlawful arrest,

1 Plaintiff was subjected to unconstitutional interrogation after he requested counsel, strip-
2 searched, cavity-searched, and incarcerated in the County Jail. The foregoing conduct violated
3 Plaintiff's civil rights, his statutory rights, and his common-law rights, as well as subjecting both
4 him and his family to severe emotional distress.
5

6 JURISDICTION AND VENUE

7 2. Jurisdiction over this section 1983 action is conferred upon this Court by 28 U.S.C.
8 section 1331 and 28 U.S.C. section 1343 subd. (3). Plaintiff further invokes this Court's
9 supplemental jurisdiction over his pendent state law claims.
10

11 3. Venue is properly laid in the Northern District of California, because the events giving
12 rise to this action occurred within this District, in Los Altos California and in Mountain View
13 California. Intradistrict Assignment to the San Jose Division is proper because the events giving
14 rise to this case occurred in Santa Clara County.
15

16 PARTIES

17 4. Plaintiff, Jim Roe, is the pseudonym of a natural person residing in Los Altos, California.
18 He sues under this pseudonym to protect his own privacy and the privacy of his family.

19 5. Defendant Patrick Ward ("Officer Ward") is, or was, a Mountain View, California, Police
20 Officer.
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22 6. Defendant Britton Moore ("Officer Moore") is a Mountain View, California, Police
23 Officer.
24

25 7. Defendant Marco Garcia ("Officer Garcia") is a Mountain View, California, Police
26 Officer.
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28 8. Defendant City of Mountain View ("CMV") is, upon information and belief, a municipal
corporation organized under the laws of the State of California

9. Defendant Mountain View Police Department (“MVPD”) is, upon information and belief, a department, office, or subdivision of Defendant CMV.

10. Does 1-10 are persons, acting in concert with the named defendants, whose identity Plaintiff has not been able to ascertain at this time.

PLAINTIFF’S PERSONAL BACKGROUND

11. Plaintiff, Jim Roe, was born on June 16, 1961, in Rochester, New York. He holds a Bachelor’s degree and a Master’s Degree, both in Chemical Engineering, and both from Cornell University. Prior to the events of late spring 2015, described below, Roe was never arrested, never charged with a crime, and never convicted of a crime. Indeed, Roe had no contact with law enforcement whatsoever.

12. Jim Roe has been married to Lisa Roe since 1988. They have resided at their current address in Los Altos, California for 29 years. They own their home outright. Lisa, like Jim, has a bachelor’s degree and a master’s degree. Both are from Stanford University in the field of Industrial Engineering. Throughout their marriage, Jim and Lisa have both held responsible, well-compensated jobs at Silicon Valley high-tech companies. Jim has specialized in the development and manufacture of novel, lifesaving bio-medical devices.

13. On July 12, 1994, a daughter was born to Jim and Lisa Roe. She recently graduated from Stanford University with a Bachelor of Science degree, and works and lives in San Francisco.

14. On October 10, 1999, a son, JR, was born to Jim and Lisa. In the first several months of life, JR exhibited substantial developmental delays. He was a “floppy baby” suffering from hypotonic cerebral palsy, and could not crawl or walk before age three. Eventually, it became apparent that JR was also severely autistic, unable to speak and exhibiting significant behavioral issues. He was not, however, emotionally disturbed or significantly intellectually impaired. JR

1 has benefitted from extensive speech therapy, learning to speak in short sentences. Nonetheless,
2 he is often unintelligible to those who do not know him. JR often makes loud noises in addition
3 to speaking. He is unpredictable, impulsive, and prone to bolt from parental control. JR is often
4 accompanied by his service dog, Oakland, who helps Jim and Lisa manage JR in public places.
5

6 15. Jim and Lisa Roe have given their all to provide their autistic son JR with the best
7 possible education and therapy. In addition to enrolling JR in a renowned school for autism, Jim
8 and Lisa offer JR every enrichment and activity that can facilitate his development and help him
9 toward a happier life within the community. These activities have included private speech and
10 occupational therapy, special needs baseball, basketball and soccer, farm animal visits, and
11 Youth Drama for All.
12

13 16. The Mountain View El Camino YMCA (the “YMCA”) was long a special place for the
14 Roe family. The Roes were charter members. At the YMCA, the Roes found a place of respite
15 and safety, where they could exercise and relax within an inclusive community. Over the years,
16 the Roes contributed many volunteer hours to ensuring that the YMCA was accessible to all.
17

18 17. The Roes were instrumental in introducing the inclusive “Y Dance for All” group, and
19 participated in this group each Saturday. After Dance for All each Saturday, the Roes would eat a
20 lunch or snack at the YMCA. Then, JR would take a private swimming lesson while his parents
21 swam laps.
22

23 18. Jim, in addition to directly helping his son, JR, by providing the education and activities
24 described above, also contributes to the community in ways related to JR’s disability. Jim has
25 volunteered as a puppy-raiser for Guide Dogs for the Blind, and was certified to lead their autism
26 dog team. Jim also served on a committee to find and purchase a new facility for his son’s
27 school, now chairs a committee to find and manage outdoor spaces for the school, volunteers for
28

1 Animal Assisted Happiness (a Los Altos non-profit) to build-out a new “Smile Farm” in
2 Sunnyvale, and is working with Lisa to develop a Constellation Community Living model for
3 special needs adults. Jim will soon begin serving on a Santa Clara County oversight committee
4 for the non-profit Magical Bridge Foundation’s efforts to build parks for people with special
5 needs.
6

7 19. Lisa is also deeply involved with community activities related to her son’s disability. She
8 takes the leading role in developing the Constellation Community Living model for special needs
9 adults. She serves on the Board of Directors of the Los Altos-based non-profit, Animal Assisted
10 Happiness. She leads efforts to develop inclusive “Y for All” programs at the YMCA. Finally,
11 Lisa plays a leading role in the Mountain View Act for Good program that inspires an inclusive
12 and safer community for all.
13

14 **EVENTS OF MAY 23, 2015**

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16 20. On May 23, 2015, Jim, Lisa, and the service dog, Oakland, accompanied JR to the
17 YMCA, for the family’s usual Saturday routine. The family participated in the 1 p.m. Y Dance
18 for All Group. Then they sat down on a couch in the YMCA’s busy lobby, to consume the
19 snacks that they had packed. Afterward, Jim and Lisa stowed JR’s shoes under the couch, and
20 entered the pool area with JR and Oakland. JR took his swimming lesson while his parents swam
21 laps, and Oakland rested in the shade on the pool deck.
22

23 21. After the swim session, Lisa took JR into the Family and Special Needs Shower Area, to
24 assist him in changing back into street clothes. Meanwhile, Jim and Oakland showered
25 separately. Jim finished showering before Lisa and JR, and sat down to wait on the couch in the
26 YMCA lobby, under which JR’s shoes were stowed. JR’s service dog, Oakland, sat calmly at
27 Jim’s feet. Jim began reading through his e-mails on his cell phone.
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1 22. Two young girls were sprawled at the opposite end of the sofa, a short distance from
2 where Jim sat down. The girls sat up and chatted with Jim about Oakland, who was wearing a
3 service dog jacket. Jim explained that Oakland was a certified Autism Service Dog, for his son
4 JR, who would soon be meeting Jim in the lobby. One of the two girls petted Oakland.
5

6 23. A few minutes later, JR emerged from the Family and Special Needs Shower Area,
7 located down the main hallway from the lobby. JR stood five feet eleven inches tall and weighed
8 165 pounds at this time. He was making loud noises that could be heard the entire distance away
9 in the lobby. JR ran barefoot down the hallway, and entered the lobby flapping his arms with his
10 head held low. JR plopped himself down forcefully onto the couch in between Jim and the girl
11 who remained seated on the couch. Almost immediately, JR leaped up again and attempted to
12 dart away. As darting was an on-going problematic behavior, Jim grabbed JR by the back of his
13 t-shirt, pulled him back onto the couch, and said something to the effect of “sit your butt down.”
14 This was Jim’s routine response to JR’s attempts to dart away.
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17 24. Shortly thereafter, Lisa entered the lobby, carrying a swim bag. Lisa asked Jim about a
18 foul smell in the lobby, and Jim responded non-verbally by pointing to a homeless man seated
19 nearby, across from the couch, surrounded by his soiled belongings. Lisa began organizing the
20 family’s belongings to leave the YMCA.
21

22 25. One girl was still sitting on the couch as the Roe family prepared to leave. A woman,
23 who appeared to Jim to be the girl’s mother, approached. Jim asked the woman if the girls were
24 twins, stating that he himself was a twin. The woman did not respond before leaving the YMCA
25 with the girl. Then, Jim helped JR don his shoes and socks, attached JR to Oakland’s harness,
26 and departed the YMCA with his wife, son, and dog.
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EVENTS OF JUNE 5, 2015

26. On June 5, 2015, Maria S. drove her daughter Savannah to the MVPD. Maria was interviewed by Officer Patrick Ward. Maria told Officer Ward that a friend of hers told her that, according to the friend's daughters, a man, with a service dog and an autistic child, had bothered Maria's daughter, Savannah, at the YMCA. Maria had not seen anyone bothering Savannah.

27. During her interview with Officer Ward, Maria characterized herself as "the kind of mom that like, I always see where my kids are." Maria was concerned about "pervs": "I'm assuming that pervs like to befriend kids or act like they're cool or like get comfortable, but they're actually violating your space. . ." She further explained: "I sent my daughter to Walden West . . . A counselor got caught with hundreds of images of child porn and now the second kid came out and said he was molested, and my daughter went there, she just went there. Now I asked my daughter, oh my gosh do you recognize this guy? . . . The thing is these types of things happen and someone has to be paying attention. . . What I told my daughter is you have to say something because it's not just for you but you could be protecting someone else."

28. Maria expressed to Officer Ward that she was not pleased with the YMCA, either when she initially visited to sign up for a trial membership, or later when she telephoned to complain about her daughter being bothered by the man with the service dog. According to Maria, during the initial visit, the YMCA took a "fricken" "long time" to process her trial membership application. As she departed, an "Asian guy he looked at me kind of funny and I felt like he's looking at us weird because he thinks our kids are brats cuz it was like 3:30 and the girls were off the hook." When she left the YMCA, Maria thought that her daughter was "acting weird," but "she kept saying nothing's wrong." Approximately twelve days later, Maria heard from her

1 friend that the friend's daughters said that a man with a service dog and autistic child, about six
2 years old, touched Savannah at the YMCA.

3 29. When Maria called the YMCA to complain, she was not satisfied with the YMCA's
4 response. She felt that the YMCA should have called a high-level meeting to discuss the issue.
5 Maria also believed that the YMCA should have been able to immediately identify members
6 with service animals. Displaying her ignorance of controlling federal law, Maria informed
7 Officer Ward: "They should know those things because when you have a service animal and you
8 bring him into a facility you should get some information about the animal like do they have
9 their rabies shots, certain vaccinations -- you have to. You can't just take a service animal into [a
10 YMCA]."

11 30. Maria also took umbrage at being asked to put her complaint in writing: "They have a
12 potential child molester on their hands. And then they wanted me and my daughter to write-up
13 something to put in their file ... I think it all comes down to money, it comes down to this person
14 is a member, and they want his money, we are not members, it doesn't matter. This gave me the
15 impression that I would never want to go back to the YMCA because all you care about is if I'm
16 a member or not. This is the first time we ever went to this place and this happened. I'm glad I
17 don't pay money because if I paid money and this happened, I'd flip out. *They'd be calling you*
18 *guys [MVPD] because I'd be pissed-off. . .*"

19 31. Maria went on to speculate that Jim could be molesting special needs children, and that
20 the Mountain View YMCA employed "2-way mirrors": "They need to do more than just put it in
21 the file . . . [T]his guy has an autistic son -- he could be having access to all kinds of special
22 needs children and he's just touching them . . . they could have two-way mirrors, they could be
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1 doing all kinds of weird stuff and you know what happens and you might think this woman's
2 been watching too much news."

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4 32. The Mountain View police interviewed Savannah, as well as her mother, Maria. The
5 interview was video-recorded. Savannah stated of the man with the service dog: "He slapped me
6 on the butt and asked me 'how old are these buns?'" Interviewing Office Ward asked Savannah
7 to illustrate, on the couch at the MVPD, how she was situated on the couch at the YMCA when
8 this happened. In repeatedly illustrating how she was situated on the YMCA couch, Savannah
9 consistently placed herself *on* her buttocks, with her buttocks pressed against the couch seat
10 cushions, rendering the story physically impossible. Officer Ward, apparently puzzled, asked
11 Savannah: "He was able, based on how you were sitting, he was able to reach past-- all the way
12 past your legs?" Officer Ward's tone was one of incredulity.

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14 33. Savannah further explained that next, she and her friend asked the man about the service
15 dog, and the man explained that Oakland was a service dog for his autistic son. According to
16 Savannah, when the autistic son walked into the lobby, he appeared to be 11 or 12 years old.

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18 34. In a follow-up interview, Savannah reiterated that the man with the service dog "smacked
19 her on the butt" but did not "touch any private areas." Officer Ward asked: "do you have any
20 idea why he would've done that?" Savannah replied: "He was probably a pervert." This
21 response, in an interview occurring nearly two weeks after the alleged touching, echoed
22 Savannah's mother's obsession with "pervs" as reflected in her separate interview with Officer
23 Ward. It also suggests that Savannah was influenced by: (a) the news story about child
24 molestation at Walden West, which aired the day before the visit to the police, and (b) Maria's
25 remarks to Savannah concerning molestations at Walden West and "perverts" in general.
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1 35. The allegation that Plaintiff smacked Savannah on the “butt,” and asked “how old are
2 these buns,” is entirely false. Plaintiff neither smacked Savannah’s “butt” nor said anything
3 regarding her “buns.”
4

5 **EVENTS OF JUNE 7, 2015**

6 36. Based upon the physical impossibility of the buttock-smacking story as told by Savannah,
7 the MVPD and Officer Ward should certainly have known, and did know, that Savannah’s story
8 was untrue. The story of Jim sexually molesting Savannah in a crowded lobby, with her mother a
9 few feet away registering for a trial YMCA membership, and Jim’s wife and child about to arrive
10 on the scene, was simply absurd. Moreover, Defendants should have understood that this was a
11 false copycat accusation, because Maria and Savannah came to the police nearly two weeks after
12 their visit to the YMCA, but the day after CBS Bay Area News reported that a second child
13 molestation victim had come forward at the Walden West Science Camp. Indeed, Maria
14 concluded her speculative ramblings about “pervs” with a direct reference to hearing on the news
15 about a second victim coming forward at Walden West. Nonetheless, rather than greeting the
16 copycat accusation with skepticism, Officer Ward responded to Maria’s assertion that “these
17 types of things happen and someone has to be paying attention,” by stating “I agree.”
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20 37. Defendants joined in the witch-hunt atmosphere, in the wake of the Walden West Science
21 Camp revelations, by deciding to arrest Jim. They elected to arrest him inside his home, without
22 probable cause and without any warrant, for alleged misdemeanor conduct occurring over two
23 weeks earlier. This both violated Jim’s Fourth Amendment right to be secure from seizure in his
24 home, and violated California Penal Code section 836, which prohibits arrests for misdemeanors
25 committed outside the immediate presence of a police officer.
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1 38. Defendant Mountain View Police Officers Ward and Moore entered the home of Jim and
2 Lisa Roe at 9:33 p.m., on June 7, 2015, without benefit of either an arrest warrant or a search
3 warrant. They attempted, unsuccessfully, to separate Jim and Lisa, and to interrogate them
4 separately. When Lisa and Jim refused to be separated and refused to be interrogated in the
5 absence of counsel, Officers Ward and Moore handcuffed Jim, and arrested him without benefit
6 of an arrest warrant.
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8 39. The warrantless intrusion was extremely distressing to Lisa, who wept continuously
9 while the police remained in the house. JR became highly agitated from the commotion. He
10 banged on the walls and screamed, then alternated between attempting to comfort his mother,
11 smacking his hands together, and screaming. Lisa, in turn, tried to calm JR. Upon exclaiming,
12 “Dad’s gone,” Jeffrey retreated into his room, and continued smacking, banging, and screaming.
13 JR’s last words before the police left the house were “Mommy is upset. Mommy is upset. Dad’s
14 gone. . . . Mommy is upset [inaudible] upset.”
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17 40. Officers Ward and Moore parted Jim from his wallet, but allowed him keep his cell
18 phone, giving the false impression that Jim would be permitted to use the cell phone to call Lisa.
19 In fact, Officers Ward and Moore permitted Jim to bring his cell phone to the police station only
20 because they intended to coerce Jim to consent to a warrantless search of the phone. Both
21 officers ignored Lisa’s request that they wait for an attorney friend of the family to arrive.
22

23 41. Defendants deliberately arrested Jim on a Sunday, because he could not be released on
24 bail until the following business day. Per their pre-existing plan, Defendants took advantage of
25 this extended custody to: (a) interrogate Jim in isolation notwithstanding his request for an
26 attorney, (b) pretend that they had an incriminating video of the YMCA lobby during the alleged
27 incident, and (c) coerce Jim’s consent to a search of his cell phone. Defendant Officer Garcia
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1 took a leading role in the interrogation. Jim denied all wrongdoing, and stated that any video
2 recording of the YMCA lobby would vindicate him. The search of Jim's cell phone produced
3 nothing incriminating. In fact, the police did not possess a video recording of the YMCA lobby.
4

5 42. After the Mountain View police completed their extended, late-night interrogation of Jim,
6 he was transferred, at approximately 1 a.m., to San Jose. Following a strip-search and cavity-
7 search, Jim was confined, overnight and for part of the following day, in the County Jail with
8 drug addicts and career criminals. The strip-search and cavity-search at night in the County Jail
9 were part of Defendants' plan to ensure that Jim would be punished regardless of whether he was
10 ever convicted of anything.
11

12 43. *The bodily and personal violation that Jim suffered at Defendants' hands was more*
13 *traumatic than anything that Savannah could possibly have experienced had her allegations*
14 *been true -- which they were not. Jim's distress was vastly compounded by the distress that his*
15 *wife and son experienced at the time of his arrest.*
16

17 PROSECUTION

18 44. Lisa posted bail for Jim on Monday, June 8, 2015. As it turned out, no YMCA video
19 recording of the lobby area on May 23, 2015 was available to put the matter to rest. Defendants'
20 claim to possessing such a recording was fraudulent. On June, 24, 2015, the Santa Clara County
21 District Attorney filed a two count Misdemeanor Complaint charging Jim with Misdemeanor
22 Sexual Battery in violation of Penal Code section 242-243.4(3)(1), and Misdemeanor Soliciting
23 or Engaging in Lewd Conduct in Public in violation of Penal Code section 647(a). Although both
24 charges were misdemeanors, they carried the threat of sex offender registration.
25

26 45. Jim retained counsel and pursued a vigorous defense with the intention of bringing the
27 case to trial. A pedophilia expert witness was retained, and opined that Jim was not a pedophile.
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1 A second witness, expert in the proper interviewing technique for children alleging sex crimes,
2 was retained, and opined that the interviewing techniques used on Savannah were suggestive. A
3 blue ribbon cast of nine character witnesses, who knew Jim from all aspects of his life, was lined
4 up to testify on Jim's behalf. Jim and Lisa spent tens of thousands of dollars on Jim's defense,
5 and sustained additional financial losses because Jim was unable to work as the case approached
6 trial.
7

8 46. Trial preparation continued for sixteen months. In early September of 2016, Deputy
9 District Attorney, Audrey Pak, offered Jim a plea bargain in which he would admit a "non-290"
10 misdemeanor -- in other words, a misdemeanor that would not require sex offender registration.
11 Jim's lawyer responded to Deputy District Attorney Pak in a hand-delivered letter, stating that
12 the appropriate resolution was dismissal, in light of numerous shortcoming of the prosecution
13 case, which defense counsel set forth in detail. On the eve of trial, in late September of 2016,
14 Deputy District Attorney Pak responded that she would not dismiss the case, and that her last and
15 best offer was for Jim to admit a misdemeanor that would not trigger sex offender registration.
16

17 47. Jim was strongly opposed to accepting the plea bargain because he had done nothing
18 wrong. Nonetheless, as Lisa observed, however weak the prosecution's case, sex offender
19 registration would render a misdemeanor conviction, on the original charges, catastrophic to Jim
20 and his family. Due to residency restrictions for pedophile sex offenders, prohibiting them from
21 living within 2,000 feet of a school or park, sex offender registration would require Jim to leave
22 the home where he had lived for three decades. He would foreseeably be forced to move from
23 the Silicon Valley, where he and Lisa maintained skilled employment with a level of
24 compensation that enabled them to meet JR's extensive needs. A rural area, with housing distant
25 from schools and parks, would be unlikely to provide Jim and Lisa with either suitable
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1 employment or an acceptable school for their autistic son, JR. If Jim and Lisa lived apart, the
2 task of caring for JR in a one-parent setting would have become completely untenable.

3 48. Ultimately, the coercive power of the threat of sex offender registration was such that Jim
4 pled No Contest to misdemeanor disorderly conduct, even though he had engaged in no
5 disorderly conduct and committed no crime of any description. He was placed on probation for
6 three years, ordered to perform 75 hours of community service, and barred from coming within
7 300 yards of the YMCA of which he is a charter member.

8 49. Jim has retained the undersigned counsel, not only to pursue this action, but also to
9 pursue habeas corpus proceedings challenging the constitutionality of sex offender registration as
10 applied to Jim's case. Upon obtaining a judicial declaration that he cannot be subjected to sex
11 offender registration, Jim will move to withdraw his plea and obtain a complete acquittal at jury
12 trial.

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16 **First Cause of Action - 42 U.S.C. Section 1983 - Jim Roe Against Individual Officers**

17 50. Plaintiff incorporates by reference the allegations of the preceding paragraphs of this
18 complaint.

19 51. Defendants Ward, Moore, and Garcia (the "Officer Defendants"), acting under color of
20 state law, violated Plaintiff Jim Roe's federal constitutional rights. In particular, they violated his
21 Fourth Amendment rights by arresting him in his home, without probable cause, without an
22 arrest warrant, and absent exigent circumstances, for an act which, had it occurred, would have
23 constituted a misdemeanor. They further violated Plaintiff's Fourth Amendment rights, and his
24 privacy and free association rights secured by the First, Eleventh, and Fourteenth Amendments
25 of the United States Constitution, by coercing him to consent to a warrantless search of his cell
26 phone. The Officer Defendants violated Plaintiff's Fifth Amendment right to remain silent, his
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1 Sixth Amendment right to counsel, and his Fourteenth Amendment Right to Due Process, by
 2 continuing to interrogate Plaintiff after he requested an attorney, and by attempting to trick
 3 Plaintiff by claiming to possess a videotape of events in the YMCA lobby. The Officer
 4 Defendants violated Plaintiff's Due Process, Eleventh Amendment and Fourteenth Amendment
 5 rights to privacy, family integrity and parental relations, by unlawfully invading Plaintiff's home
 6 on a Sunday night and exposing his wife and autistic son to the sight of Jim being led away in
 7 handcuffs. The Officer Defendants further violated Plaintiff's privacy rights by deliberately
 8 arresting him over the weekend so that he would be transferred to the San Jose County Jail, and
 9 strip-searched and cavity-searched prior to being placed in a cell. There was absolutely no reason
 10 why Jim could not have self-surrendered with an attorney present, if the Mountain View Police
 11 were determined to book him. As evidenced by the preceding "Plaintiff's Personal Background"
 12 section of this Amended Complaint, Jim was scarcely a flight risk. Moreover, California Penal
 13 Code section 836 mandated self-surrender as opposed to arrest.

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 17 52. The foregoing constitutional violations were gravely injurious to Jim's emotional well-
 18 being and familial relations, and Jim is entitled to compensation for these injuries.

19 **Second Cause of Action - 42 U.S.C. Section 1983 - Jim Roe Against MVPD and CMV**
 20 **(Monnell Claim)**

21
 22 53. Plaintiff repeats the foregoing allegations of this Complaint and incorporates them herein
 23 by reference.

24 54. Plaintiff is informed and believes that the Officer Defendants, in violating his
 25 Constitutional rights as set forth above, acted pursuant to established customs, policies, and
 26 practices of the MVPD and CMV. Specifically, Plaintiff is informed and believes that it is the
 27 custom, policy, and practice of the CMV and the MVPD to:
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1 (a) attempt to interview suspects in their homes prior to arresting them or even informing
 2 them that they are suspects, in order to interview suspects alone without benefit of a *Miranda*
 3 advisement;

4
 5 (b) arrest suspects on weekends so as to hold them overnight, at a time when they are
 6 unlikely to be able to contact counsel, and to then take advantage of these circumstances to
 7 coerce confessions through trickery, Reed, Inbau Interrogation Methods, and the like;

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 9 (c) arrest suspected child molesters on weekends so as to punish them, without Due
 10 Process, by incarcerating them with career criminals at the jail in San Jose, after forcing them to
 11 submit to strip-searches and cavity-searches;

12 (d) arrest suspected child molesters in front of their families for the purpose of shaming
 13 and humiliating the suspect and inflicting emotional distress upon the family;

14
 15 (e) arrest suspects in their homes without regard to the impact that this may have on
 16 autistic family members or family members with other intellectual or emotional conditions
 17 rendering them especially sensitive and vulnerable;

18 (f) deprive suspected misdemeanants accused of touching children, of the opportunity to
 19 self-surrender, even if they are not flight risks, and even if California Penal Code section 836
 20 prohibits their arrest.

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 22 55. The actions of the Officer Defendants, set forth above, undertaken pursuant to the
 23 customs, policies, and practices of Defendants MVPD and CMV, were gravely injurious to
 24 Plaintiff.

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 26 **Third Cause of Action - Jim Roe Against All Defendants -
 Bane Civil Rights Act - California Civil Code Section 52.1 subd. (b)**

27 56. Plaintiff repeats and incorporates by reference, the prior allegations of this Amended
 28 Complaint.

57. The Defendants, and each of them, have, by their actions set forth above, interfered with Jim Roe's exercise and enjoyment of rights secured by the Constitution and laws of the United States, and the Constitution and laws of the State of California. In addition to violating Jim Roe's federal constitutional rights, as previously set forth, Defendants have violated: (a) Jim Roe's right to privacy, protected by Section 1 of the California Constitution, (b) his right to be secure in his person and home against unreasonable seizures, protected by Section 13 of the California Constitution, and (c) his privilege against self-incrimination, right to counsel, and right to due process prior to deprivation of liberty, all guaranteed by Section 15 of the California Constitution. Moreover, Defendants infringed Plaintiff's liberty rights by arresting him for alleged misdemeanor conduct not occurring in the immediate presence of a police officer, in violation of California Penal Code section 836.

58. Defendants' actions, in violation of Plaintiff Roe's federal and state constitutional rights, and also his state statutory rights, gravely injured Plaintiff. California Civil Code Section 52.1 subd. (b) provides Roe with an individual cause of action and the entitlement to both monetary compensation and prospective injunctive relief for these infringements of his rights. Roe hereby avails himself of all remedies provided by California Civil Code section 52.1 subd. (b).

Fourth Cause of Action - False Arrest and False Imprisonment - Jim Roe Against All Defendants

59. Plaintiff repeats and incorporates by reference, the prior allegations of this Amended Complaint.

60. Defendants' warrantless arrest of Jim Roe without probable cause, in his home, for alleged misdemeanor conduct, constituted false arrest and false imprisonment, because it violated Roe's federal and state constitutional rights, as well as his rights under California Penal Code section 836.

61. Roe was gravely harmed by this false arrest and imprisonment, set forth above, and as set forth in the Emotional Distress Causes of Action that follow.

62. Defendants' conduct was not only unlawful but also malicious and outrageous.

63. Defendants CMV and MVPD are responsible for the conduct of the Officer Defendants under the doctrine of Respondeat Superior.

64. Plaintiff Jim Roe should therefore be awarded both compensatory and punitive damages against all defendants.

Fifth Cause of Action - Intentional Infliction of Emotional Distress - Jim Roe Against All Defendants

65. Plaintiff repeats and incorporates by reference, the prior allegations of this Amended Complaint.

66. Defendants intentionally inflicted severe emotional distress upon Jim Roe by their actions, previously set forth, including, but not limited to:

(a) illegally and unconstitutionally arresting him in his home on a Sunday night, in the presence of his wife, who responded with uncontrollable weeping, and of his autistic son who responded with banging on walls, slapping of hands, and screaming;

(b) interrogating Jim Roe at night and alone, notwithstanding his request for counsel;

(c) falsely insinuating that they possessed a video recording of Jim touching Savannah;

(d) subjecting Roe to a strip-search and cavity-search;

(e) incarcerating Roe overnight in the San Jose County jail in the company of drug addicts and career criminals.

67. Defendants' act of arresting Jim Roe in his home caused Jim to feel that his familial place of refuge had been violated. Witnessing his weeping wife, while helpless to comfort her, was extraordinarily painful for Jim. To this day, Jim worries about, and is pained by, the emotional

1 injury visited upon JR by the in-home arrest. This is so because JR's autism renders him
2 abnormally sensitive to disruptive stimuli, and simultaneously ill-equipped to discuss and
3 address his distress.
4

5 68. Defendant's unlawful, malicious and outrageous conduct was such as should not be
6 tolerated in a civilized society. Jim Roe is entitled to compensation therefore, as well as punitive
7 damages.

8 **Sixth Cause of Action - Reckless and Grossly Negligent Infliction of Emotional Distress -**
9 **Jim Roe Against All Defendants**

10 69. Plaintiff repeats and incorporates by reference the allegations of paragraphs 1-64 above.

11 70. Not only was Defendants' conduct an expression of their malice against Jim Roe, as set
12 forth above, it also evinced reckless disregard for the welfare of Jim's autistic son JR. The
13 Officer Defendants, and each of them, was aware that Jim had an autistic son when they decided
14 to arrest Jim in his home on the night of Sunday, June 7, 2015. It was foreseeable, and indeed
15 highly probable, that vulnerable autistic minor JR would be at home at 9:30 p.m. on a Sunday
16 evening when Defendant Officers Ward and Moore approached the Roe residence. Defendants
17 knew, or should have known, that JR's autism would render him especially sensitive to removal
18 of his father from the home, and especially sensitive to the surrounding commotion. Defendants
19 also knew, or should have known, that JR's autism would render him unable to fully comprehend
20 or discuss the arrest, and that, as a consequence, JR's parents' ability to mitigate the harm caused
21 by the arrest in JR's presence would be limited. Defendants inflicted severe emotional harm
22 upon JR by arresting his father in the house when JR was at home. Jim experienced severe
23 emotional distress witnessing his son's reaction and its aftermath.
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1 71. Defendant's reckless disregard for the welfare of autistic JR and his family is outrageous
2 conduct that should not be tolerated in a civilized society. Both compensatory and punitive
3 damages should be awarded.
4

5 WHEREFORE, Plaintiffs prays for relief against Defendants as follows:

6 Awarding compensatory damages according to proof at trial;

7 Awarding punitive damages according to proof at trial;

8 Awarding injunctive relief fashioned to prevent any repetition of Defendants' tortious
9 and unconstitutional conduct.
10

11 Awarding costs and attorney's fees, if and as provided by law;

12 Granting such other and further relief as the Court may deem just and proper.

13 ***Jury Trial Demanded.***

14 Respectfully submitted,
15

16
17 S/s _____
18 V. Elizabeth Grayson
19 Attorney for Plaintiffs
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